

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

THOMAS D. GILLIS,	)	Plaintiff	)
vs.	)		Civil Action No.: 03-12389-GAO
SPX CORPORATION INDIVIDUAL ACCOUNT	)		
RETIREMENT PLAN and SPX RETIREMENT	)		
ADMINISTRATIVE COMMITTEE,	)		
	Defendants	)	
	)		

---

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL SUMMARY  
JUDGMENT MEMORANDUM REGARDING RECENTLY ENACTED  
PENSION LAW**

Plaintiff Thomas D. Gillis (“Mr. Gillis”) hereby respectfully requests that the Court grant him leave to file a Supplemental Summary Judgment Memorandum to Incorporate Recently Enacted Pension Law, the principal purpose of which is to inform the Court of recent changes in the pension law that have a direct and significant bearing on this case and issues raised in the pending cross motions for summary judgment.<sup>1</sup> Mr. Gillis’s proposed Supplemental Summary Judgment Memorandum to Incorporate Recently Enacted Pension Law is attached hereto as Exhibit A.

In support of the instant motion, Mr. Gillis states: On August 17, 2006 the Pension Protection Act of 2006 (H.R. 4) became law. While the Pension Protection Act of 2006 was not technically effective when many of the facts of the case at bar occurred, it is compatible with and an application of law then in effect. Specifically, the newly enacted change in the pension law

---

<sup>1</sup> Cross motions for summary judgment were filed on February 8, 2006, and oral argument was held on June 27, 2006. The motions have been under advisement since that time. Mr. Gillis filed an emergency motion yesterday, September 7, 2006, requesting that the Court stay consideration of the summary judgment motions temporarily to enable Mr. Gillis an opportunity to file the instant motion.

requires the early retirement subsidy to be included in the calculation of benefits of a participant in a cash balance plan, who, like Mr. Gillis, qualified for such a subsidy under a defined benefit plan prior to its amendment to a cash balance plan. Moreover, the new law reaffirmed and expanded the requirement that applicable individuals, such as those similarly situated to Mr. Gillis, be given prior notice of a reduction of their future benefit accruals. As a means of illustrating these points, Mr. Gillis's proposed Supplemental Memorandum presents a calculation of his benefits as of dates relevant to an appropriate legal analysis showing a cutback of his benefits in violation of both new and existing federal law. Copies of relevant provisions of the Act are attached as exhibits to the Supplemental Memorandum.

Mr. Gillis's Supplemental Memorandum will further clarify the issues and law and otherwise assist the Court in deciding the pending cross motions for summary judgment.

WHEREFORE, Mr. Gillis respectfully requests that the Court grant the instant motion and permit him to file the attached Supplemental Summary Judgment Memorandum to Incorporate Recently Enacted Pension Law and exhibits.

Respectfully submitted,  
Plaintiff,

**THOMAS D. GILLIS**  
By his attorneys,

/s/ Michael P. Twohig  
Lawrence P. Murray BBO # 561835  
Evelyn A. Haralampu BBO # 221130  
Michael P. Twohig BBO # 648079  
Burns & Levinson LLP  
125 Summer Street  
Boston, MA 02110  
(617) 345-3000

Dated: September 8, 2006

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1**

I, Michael P. Twohig, counsel for plaintiff Thomas D. Gillis, hereby certify that I conferred with Andrew W. Vail, counsel for defendants, via telephone on September 7, 2006, regarding this motion. I further certify that the parties were unable to reach agreement with respect to the relief requested in this motion.

/s/ Michael P. Twohig  
Michael P. Twohig

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorneys of record for each other party through the Court's electronic filing system on September 8, 2006.

/s/ Michael P. Twohig  
Michael P. Twohig